

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JEROME WILLIAM BORTHWELL,

Petitioner,

v.

Civil No. 5:05-60149

HONORABLE JOHN CORBETT O'MEARA  
UNITED STATES DISTRICT JUDGE

ANDREW JACKSON,

Respondent,

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**OPINION AND ORDER DENYING THE MOTION FOR A CERTIFICATE OF  
APPEALABILITY AND LEAVE TO APPEAL IN FORMA PAUPERIS**

On May 15, 2008, this Court issued an opinion and order denying Petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254. This Court also denied Petitioner a certificate of appealability and leave to appeal *in forma pauperis*. *Borthwell v. Jackson*, No. 2008 WL 2067017 (E.D.Mich. May 15, 2008). Petitioner has now filed a motion for certificate of appealability and a motion for leave to appeal *in forma pauperis*, which the Court construes as a motion for reconsideration of its prior opinion and order. For the reasons stated below, the motions for a certificate of appealability and leave to appeal *in forma pauperis* are **DENIED**.

Because this Court previously denied petitioner a certificate of appealability and a motion for leave to appeal *in forma pauperis* when it denied the petition for writ of habeas corpus, the Court will construe petitioner's motion for a certificate of appealability and his motion for leave to appeal *in forma pauperis* as a motion for reconsideration of

the Court's prior order to deny a certificate of appealability and *in forma pauperis* status in this case. *See e.g. Jackson v. Crosby* 437 F. 3d 1290, 1294, n. 5 (11<sup>th</sup> Cir. 2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Williams v. McGinnis*, 192 F. Supp. 2d 757, 759 (E.D. Mich. 2002). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Id.*

Other than conclusory or unsupported allegations, petitioner has failed to advance any arguments in his request for a certificate of appealability which shows that this Court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. A habeas petitioner's conclusory assertion that jurists of reason would find his or her claims to be debatable is insufficient to warrant the issuance of a certificate of appealability. *See Babgy v. Saffle*, 53 Fed. Appx. 25, 28 (10<sup>th</sup> Cir. 2002). Petitioner's request for reconsideration will therefore be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's application for writ of habeas corpus and denied him a certificate of appealability and leave to appeal *in forma pauperis*. *See Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

**ORDER**

IT IS HEREBY ORDERED that the Motion for Certificate of Appealability [Court Dkt Entry # 23] and the Motion to Proceed *In Forma Pauperis* on Appeal [Court Dkt. Entry # 24] are **DENIED**.

s/John Corbett O'Meara

UNITED STATES DISTRICT JUDGE

Date: July 2, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 2, 2008, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager